D.B. CIVIL WRIT PETITION NO.2885/1999
(L.R.s of Bhagu Ram Vs. The State of Rajasthan & Ors.)

DATE OF ORDER:28.05.2007

HON'BLE MR.JUSTICE RAJESH BALIA
HON'BLE MR.JUSTICE BHANWAROO KHAN

Mr.Rajesh Joshi, for the petitioner
Mr.N.M.Lodha, Additional Advocate General

BY THE COURT(PER HON'BLE MR.BALIA J.)

Heard learned counsel for the parties.

The writ petition has been filed challenging the termination of the services of the petitioner as Physical Training Instructor Gr.III inter alia on the ground that the Degree in Physical Education obtained from Nagpur University in the year 1996-97 did not make the petitioner eligible because the Physical Education Course rendered by Nagpur University was not recognised by the NCTE. The petitioner has challenged the validity of Section 17 of the National Council for Teachers Education Act, 1993.

In the first instance a Division Bench of this Court vide its judgment dated 9.8.2000 declared Section 17(4) of the Act of 1993 as ultra vires and following the said decision the writ petition filed by the petitioner was allowed.

The decision rendered in Shah Govardhan Lal Kabra Teachers College vs. Union of India & ors. (D.B.Civil Writ Petition No.1644/1999) and other group of cases was subject matter of appeal before the Supreme Court. The Hon'ble Supreme Court vide its judgment dated 23.10.2002 held the provisions of Section 17(4) to be ultra vires and remitted the writ petition back to the High Court for being considered if any other points surviving for consideration. The judgment in that petition was also set aside. The case comes back as a result of aforesaid judgment.

In the present case the petitioner had obtained the Degree in Physical Education from Nagpur University in the year 1996-97. This Court after the matters were remanded by Supreme Court had occasion to consider the degrees in Physical Education obtained from Nagpur University and it was found that such degrees were recognised provisionally upto 1998-99.

On the aforesaid premises it was contended that as on the date the petitioner obtained the Degree in Physical Education, the Institution from which he has been trained was recognised under the Act of 1993. After considering the scheme unfolded under Sections 14 to 17 of the Act of 1993 it was opined by the Court that until the matter of recognisation is

under consideration and the order of refusal is communicated to the concerned institute, it is authorized to offer a course or training in the teacher's education as a recognized institution and it does not get oblitrated subsequently on non-recognisation of the institution.

On the aforesaid principle, the degree in the case of Ummed Ali vs. The State of Rajasthan & ors. (D.B.Civil Writ petition No.2887/1999) was recognised and the writ petition was allowed with the following directions:-

> "The impugned order terminating services of the petitioner w.e.f. 15.5.1999 is quashed and it is declared that the petitioner continued in service in pursuance of his regular selection made in pursuance of the advertisement issued by the District Education Officer, Churu in 1998. The petitioner shall be reinstated within a period of 15 days. The petitioner shall also be entitled to all consequential benefits, which shall be given to him within a period of three months from the date of service of writ or submissions of certified copy of the order whichever is earlier. No costs"

In the present case petitioner Bhagu Ram has died on 15.6.2004 during the pendency of the case. Hence reinstatement cannot be given. The other issue that remain surviving is to what relief legal representative of Bhagu Ram was entitled. The application of the legal representatives of Bhagu Ram was allowed on 15.9.2004.

In view of the fact that physical reinstatement is not possible, the ends of justice would be met if the declaration is made that the petitioner Bhagu Ram's termination of service stands set aside and he is deemed to be continuing in service until he expired with all consequential benefits and as a result of being in service his legal representatives are entitled to pensionary benefits, the same shall be extended to them. However, no arrears of emoluments upto death of said Bhagu Ram shall be payable, though fixation of his pay shall be notionally made as if he was continuing in service until his death. Retiral benefits shall be computed accordingly to which his legal heirs are entitled to.

No costs.

(BHANWAROO KHAN) J. **(RAJESH BALIA) J.**

BKS/-